

Message Text

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E.O. 11652: N/A

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SUBJECT: EMERGENCY TERRORIST LEGISLATION

REF: (A) DUBLIN 1947 (B) DUBLIN 1786

1. OUR ASSERTION IN REFTEL A THAT THE EMERGENCY ANTI-TERRORIST LEGISLATION PASSED BY THE IRISH PARLIAMENT IN THE LAST TWO WEEKS WOULD GO INTO EFFECT IMMEDIATELY WAS PREMATURE. THE PRESIDENT OF IRELAND HAS DECIDED TO EXERCISE ONE OF HIS FEW PREROGATIVES OF ACTUAL POWER AND CONVENE THE "COUNCIL OF STATE" TO DISCUSS THE CONSTITUTIONALITY OF BOTH THE EMERGENCY POWERS ACT AND THE CRIMINAL LAW BILL. THE COUNCIL CONVENES SEPT 23.

2. THIS SELDOM USED PROCEDURE HAS TAKEN THE GOVERNMENT BY SURPRISE, THOUGH SOME OBSERVERS HAD NOTED THE POSSIBILITY (REFTEL B). THE EFFECT, AT THE LEAST, WILL DELAY IMPLEMENTATION OF THE LAWS AND NEGATE THE DRAMATIC IMPACT OF THE SPECIAL PARLIAMENTARY SESSION CALLED IN THE MIDDLE OF THE HOLIDAY RECESS. THE DELAY, HOWEVER, WILL NOT BE LONG. IF REFERRED TO THE COURT, THE CONSTITUTION REQUIRES A DECISION BY THE SUPREME COURT WITHIN SIXTY DAYS OF REFERRAL BY THE PRESIDENT.

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3. THE COUNCIL OF STATE IS AN AUGUST BODY, SELDOM CONVENED, CONSISTING OF THE PRIME MINISTER, DEPUTY PRIME MINISTER, LEADER OF THE OPPOSITION, SPEAKERS OF BOTH HOUSES, AND RESPECTED REPRESENTATIVES OF PROFESSIONS. FOR EXAMPLE, THE ACTRESS SIOBHAN MCKENNA IS A MEMBER. THE COUNCIL IS ONLY ADVISORY, AND THE PRESIDENT HAS SOLE DISCRETION WHETHER TO REFER THE LEGISLATION TO THE SUPREME COURT FOR A TEST OF CONSTITUTIONALITY. THOUGH TECHNICALLY THE GOVERNMENT HAS A MAJORITY ON THE COUNCIL, IT IS NOT CONSIDERED PROPER, AT LEAST SO FAR IN ITS FEW MEETINGS, FOR THE COUNCIL TO SPLIT ITSELF ON PARTISAN LINES. IT SHOULD BE NOTED THAT PRESIDENT O DALAIGH IS PROBABLY THE MOST DISTINGUISHED CONSTITUTIONAL EXPERT IN IRELAND. HE WAS A FORMER ATTORNEY GENERAL, AND JUSTICE OF THE SUPREME COURT SINCE 1953, CHIEF JUSTICE FROM 1961 - 73, WHEN HE BECAME A JUSTICE IN THE EUROPEAN COURT. O DALAIGH IS APPARENTLY TROUBLED BY THIS LEGISLATION, AND WANTS TO MAKE SURE THAT IT GETS THE FULL RUN-THROUGH OF DELIVERATIVE PROCESSES UNDER THE IRISH CONSTITUTION. CURLEY

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